ARKANSAS SUPREME COURT

No. CR 08-532

	Opinion Delivered April 30, 2009
ROBERT ALFRED WILLIAMS Appellant	PRO SE APPEAL FROM THE CIRCUIT COURT OF COLUMBIA COUNTY, CR 2005-145, HON. LARRY W. CHANDLER, JUDGE
v.	
STATE OF ARKANSAS Appellee	AFFIRMED.

PER CURIAM

A jury found appellant Robert Alfred Williams guilty of aggravated robbery and first-degree battery and sentenced him as an habitual offender to an aggregate term of 1680 months' imprisonment. The Arkansas Court of Appeals affirmed the judgment. *Williams v. State*, CACR 06-1180 (Ark. App. Oct. 3, 2007). Appellant timely filed in the trial court a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1, that was denied. He appeals the order.

Appellant raises two points on appeal. In the first, he alleges error by the trial court because he asserts that the evidence was not sufficient to establish the necessary intent for aggravated robbery. He requests de novo review of the record on the issue. In appellant's second point on appeal, he asserts that first-degree battery is a lesser-included offense of aggravated robbery and that his conviction on both charges violates the prohibition against double jeopardy. He contends that the battery charge should be set aside.

This court does not reverse a denial of postconviction relief unless the trial court's findings

are clearly erroneous. *Davis v. State*, 366 Ark. 401, 235 S.W.3d 902 (2006). A finding is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been committed. *Small v. State*, 371 Ark. 244, 264 S.W.3d 512 (2007) (per curiam).

Appellant did not raise the claim in his first point in his Rule 37.1 petition and may not now raise the claim as a basis for postconviction relief on appeal. This court has repeatedly stated that we will not address arguments, even constitutional arguments, raised for the first time on appeal. *Dowty v. State*, 363 Ark. 1, 210 S.W.3d 850 (2005); *see also Standridge v. State*, 357 Ark. 105, 161 S.W.3d 815 (2004). Moreover, we do not permit an appellant to rechallenge the sufficiency of the evidence at trial in a postconviction proceeding. *Weatherford v. State*, 363 Ark. 579, 215 S.W.3d 642 (2005) (per curiam). Appellant did challenge the sufficiency of the evidence on direct appeal and the court of appeals affirmed.

Appellant raised a double jeopardy claim below, but the trial court did not clearly err to find that the convictions did not constitute a double jeopardy violation. Appellant appears to argue that he was charged with first-degree battery based upon commission of an underlying felony, citing cases that found first-degree battery to be a lesser-included offense of aggravated robbery where the battery charge was founded upon commission of an underlying felony. He also appears to argue an ineffective-assistance claim in this point, but that argument was not raised below.[1]

Here, the record indicates that appellant was charged with, and the jury was instructed as to, first-degree battery under Arkansas Code Annotated 5-13-201(a)(3) (Supp. 2005), which states that a person commits battery in the first degree if he or she causes serious physical injury to another

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[1] We note that the record shows that counsel did raise a double jeopardy claim at trial.

person under circumstances manifesting extreme indifference to the value of human life. Appellant was not charged with battery based upon the commission of an underlying felony under Arkansas Code Annotated § 5-13-201 (a)(4)(A) (Supp. 2005). The requirement of circumstances manifesting extreme indifference to the value of human life is a distinct element not found in the applicable statutory definition of aggravated robbery. *Thomas v. State*, 280 Ark. 593, 660 S.W.2d 169 (1983).

The trial court did not clearly err in finding that appellant did not demonstrate a double jeopardy violation. Accordingly, we affirm the denial of postconviction relief.

Affirmed.